



BOARD OF ZONING APPEALS

MINUTES

December 19, 2019 Meeting

The City of Knoxville **Board of Zoning Appeals** considered the following petitions for variance of requirements of the Knoxville City Code, Appendix B, Zoning Regulations at their December 19, 2019 meeting at 4:00 pm in the Small Assembly Room, City County Building, 400 Main St, Knoxville, TN.

This meeting and all communications between the Board members is subject to the provisions of the Tennessee Open Meetings Act, Tenn. Code. Ann. § 9-44-101, et seq.

CALL TO ORDER

Chairman Kristin Grove called the meeting to order at 4:00pm.

ROLL CALL

Board members present were Kristin Grove, Daniel Odle, David Dupree, Charlie Van Beke and Don Horton.

Others in attendance were Peter Ahrens, Building Official; Bryan Berry, Building Official; Christina Magrans, Staff Attorney; Scott Elder, Zoning Chief; Joshua Frerichs, Stormwater Engineering; Amy Brooks, Knoxville-Knox County Planning Services Manager and Juliana LeClair, Board Secretary.

SPECIAL COMMENTS

Members Charlie Van Beke and Chairman Kristin Grove served their last BZA Board meeting on December 19, 2019. Member Charlie Van Beke addressed the room stating that the current Board had been the best Board and Kristin Grove had been the best Board chair in his ten years of service as a BZA member. Member Charlie Van Beke and Chairman Kristin Grove both thanked City staff members for their help with the Board during their terms.

MINUTES

Member David Dupree made a motion to approve the November 21, 2019 Minutes. It was seconded by member Daniel Odle. The Board voted 5-0 to **APPROVE**.

OLD BUSINESS

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| File: | 10-D-19-VA | Parcel ID: 094MG012,094MG011, |
| Applicant: | The 9 Group (Shailesh Patel) | 094MG010, 094MG008 |
| Address: | 1100/1104/1110/1114 Clinch Ave. | 094MG007 |
| Zoning: | O-1 (Office, Medical and Related Services) District | 1 st Council District |

Variance Request:

1) Reduce the minimum distance between a driveway and an intersecting street from 50' to 33.9' (Article 5, Section 7.H.2.a Table 5.)

As per plan submitted to build a new hotel and parking garage in the O-1 (Office, Medical and Related Services) District, 1st Council District.

Peter Ahrens advised there were seven requests for variances in the previous month. The Board had addressed the first six of them so only the 7th one was being addressed in the current meeting. Joshua Frerichs advised that Engineering had asked the Board to postpone the seventh variance until the applicant provided an updated traffic impact study. The applicant did that and addressed the concerns so Engineering no longer had a concern from a safety standpoint.

Applicant representative Mark Randolph was present and advised that the traffic impact study did implement a two year growth so it was a 2021 projection with the traffic counts in lieu of this year and they anticipated that it would be two years, if the project did move forward, before it would be complete. On page 3 of the traffic impact study, the new site plan with the curb cuts and the distance they were asking for was reflected on that sheet. Mr. Randolph stated that a member of the Planning Department had asked that they address how to get in and off the site and the reason for the shortened dimension was so that they could get Uber, taxi and delivery drivers off of the street and avoid stacking on the street. The Planning department also recommended that the applicant look at the Hampton Inn and Suites on Main St. as an example of what had worked well, hence the two curb cuts and the area to drop off and pick up. The Planning Department also asked that the applicant move those as far west as possible so that the entrances would be as far away as possible from the busy intersection of Clinch and 11th. Because of the grades, the two curb cuts and entrances were designed to tie into the existing grades along Clinch to give distance between and allow a couple of cars to stack which would be part of the hardship as to why they were asking for the reduced distance. In the traffic impact study it was indicated that they needed 250 ft. of site clearance along Clinch and that particular location would allow them to have those distances of 250 ft. The applicant also planned to provide small, ground level site signage for entrance, exit, deliveries etc. so as not to impact

traffic site lines. The applicant also eliminated and pulled back the parking garage and deck. The initial submission had site walls and they pulled that back, removed the parking spaces that City Engineering wanted them to do and it improved the site distances entering and exit that particular street.

Chairman Kristin Grove made a motion to approve. It was seconded by member Charlie Van Beke. The Board voted 5-0 to **APPROVE**.

File: 11-I-19-VA **Parcel ID:** 095OB02701, 095OB02801, 095OB03004
Applicant: Michael Davis 095OB03003, 095OB03002
Address: 931 Langford Ave. 1st Council District
Zoning: SW-2 (River Road, Goose Creek ROW and Island Home Ave. District)

Variance Request:

Empire Block: 1) Reduce the minimum required building frontage at setback for a principal building in an FD-SW-2 district from 75% to 32.3% for Building "A" along Empire St. (Article 4 Section 4.1.3.C.4)

Dixie Block: 2) Reduce the minimum required building frontage at setback for a principal building in an FD-SW-2 district from 75% to 49.2% for Building "F" along Waterfront Dr. (Article 4 Section 4.1.3.C.4)

Claude Block: 3) Reduce the minimum required building frontage at setback for a principal building in an FD-SW-2 district from 75% to 69.6% for Building "H" along Waterfront Dr. (Article 4 Section 4.1.3.C.4)

Barber Block: 4) Reduce the minimum required building frontage at setback for a principal building in an FD-SW-2 district from 75% to 62% for building "K" along Waterfront Dr. (Article 4 Section 4.1.3.C.4)

As per plan submitted to construct a 230-unit multi-family development in the SW-2 (River Road, Goose Creek ROW and Island Home Ave.) District.

Peter Ahrens advised the application was postponed from the previous month with the desire to have the developer engage the community groups to discuss their property and their proposed development. That did occur on the 10th of the month.

Applicant representative Peter Hall was present and advised they did have a meeting with the neighborhood on the 10th, it went well and ended with really no questions specific to the variance. Mr. Hall stated they felt their design team had done a great job following the letter of the law in the south waterfront zoning code and they felt that it was a pretty straight forward variance for conditions that they couldn't control. Mr. Hall asked that anyone who would speak in opposition would speak specifically in reference to the variance. They understood there was

sensitivity to the neighborhood and development in general but they felt that they were following the zoning code that was in place and that it was a pretty straight forward variance.

Neighborhood resident and business owner Jenny Arthur was present to speak in opposition. Ms. Arthur addressed the board with the below quote:

“We would like to thank the Board of Zoning Appeals for giving the neighborhood residents time to understand this variance request and respond to it specifically. After close study, we have concluded that no hardship is created by the South Waterfront regulations being enforced here. What limits the developer’s ability to meet the 75% frontage requirement on all fronts is not the shape of their vacant lots, it’s not the shape of Waterfront Dr.; it is the shape of their proposed development.

The South Waterfront District code of 2017 ‘carries out the policies of the South Waterfront Vision Plan by regulating development and land uses within the City’s designated South Waterfront, consistent with the Vision Plan.’ Suggested building types for SW-2 density include duplex houses, row houses, and multiple unit housing, the diversity of which easily accommodates the curves of Waterfront Drive while encouraging appropriate density in SW-2.

Thus, the developer has many, many reasonable uses of this land still available, uses that are consistent with the Vision Plan and in harmony with the undulating frontage of Waterfront Drive. Granting these variances would enable a development which is not in harmony with the general purposes and intent of the ordinance and Vision Plan, both approved by the City Council. Therefore, these variances are not a small request, they are a huge request.

In short, we maintain that simply wanting to build something different than the code allows does not meet the definition of a hardship. We disagree that there has been meaningful engagement with the community. They have met with us and presented the same plans over and over but not accepted or used any of our input. We urge you to deny these variances.”

Mr. Hall spoke in rebuttal and disagreed that they hadn’t had meaningful discussions and opportunities to communicate or take advice. They had tried to take into consideration suggestions given and provided ample opportunity. They had several meetings and there was no discussion. Mr. Hall ended the meeting last time with asking if there were any specific responses or questions about the variance and the room was silent. Mr. Hall stated he couldn’t speak to how much more they could communicate or ask questions, there was just a disagreement on what development should go there. Mr. Hall stated they were investing, they bought the property and they should have the right to build on it within the code and within the zoning ordinance. Mr. Hall stated they felt it was a pretty straight forward and simple request.

Member David Dupree asked if there was anyone else who wanted to speak in opposition. Chairman Kristin Grove asked again if there was anyone else who wanted to speak in opposition. Ms. Arthur advised they had coordinated.

Member Daniel Odle confirmed that they were talking about a setback and that the Code was pulling the building to the street. Peter Ahrens confirmed that was correct. Member Daniel Odle confirmed that there was more space between the elevation of the building and the sidewalk, not less space. Peter Ahrens confirmed that was correct. Member Daniel Odle asked Ms. Arthur to approach the podium. Member Daniel Odle stated that generally, in a waterfront area where you have a park, a setback that pushes a building away from the street

creates more space which would feel better. Member Daniel Odle asked Ms. Arthur what was troublesome about that and why that was not better. Ms. Arthur stated that might create more space for the residents of that development but it did not create any more space for the community. Ms. Arthur stated she was a member of the South Waterfront vision plan and was one of the representatives for the neighborhood. Ms. Arthur stated they were confident that if the Code was enforced the development would be appropriate. They would like to see the diversity of the building types along the undulating line which was part of the design and would be appropriate to the neighborhood. Ms. Arthur stated they did not see it as a hardship when there were so many other uses possible. Ms. Arthur stated in the past they had asked if they had made any other plans but the developer kept bringing the same one and had not tried to present another plan. Member Daniel Odle stated that in terms of other development that they had seen as a Board, the developer had been very thoughtful and for them to only have one issue to think through was unusual compared to other developers who brought a list of 10 or 20 things. Ms. Arthur stated they were familiar with the process and they maintained that there was no hardship.

Member Don Horton confirmed that the site was behind the school with a fairly big topographic change. Member Don Horton asked how the developer was dealing with that. Architect John Sanders was present and advised they had met with City Engineering quite a bit in regards to topography and creation of the streets that they were required to build with the project. They were reconnecting Barber back down to Waterfront Dr. which didn't currently exist. Claude, Dixie and Empire were the streets to the east. All of those streets had been platted as right-of-way and those City streets would be part of the project that they were executing. They were implementing that to connect Langford down to Waterfront Dr. so the topography change was connecting two points that were fixed, Langford and Waterfront. They were doing that with those arterial streets. SWT required them to build to the front of the sites, they really didn't have side yards; all yards were fronts because of that which created a bit of challenge as well. They were trying to stitch back together what was a traditional neighborhood in that area, also dealing with the floodplain as well so they were having to raise the grade of the sites quite a bit to get that up to the minimum which was one foot above the floodplain to build the new buildings. There would be copious amounts of fill brought into those sites to bring that up and meet the letter of the floodplain law. Mr. Sanders stated that Peter Ahrens had explained the variances about the frontage. In most of their world it was the word setback, but in SW-2 it was frontage. They were trying to deal with those undulating streets, the biggest one being at the cul-de-sac at the far west of the property where it swept around between Barber and Claude and there was another one on Empire as well. There were small deviations that were creating outdoor space and were part of the development and on the property. They would disagree with the statement that it wasn't part of the community because one could walk on it and be a part of that grassy, landscaped area. Mr. Sanders stated that it wasn't a gated community in that sense. Member Don Horton asked if the change in topography would be a barrier to keep people moving through the site only at the streets. Mr. Sanders stated the arterial moments that they were creating would connect the neighborhood back to the waterfront which does not currently exist, people currently have to walk around and hit the boathouse and the far, east side to enjoy the park. Mr. Sanders stated there would be sidewalks on all of the new streets and while they weren't inviting the general public to cut through the site it would be within the realm of possibility for anyone to do. Mr. Sanders stated it was creating more landscaped area and it was a copious landscape plan. The South Waterfront submittal had been approved except for a plat and this variance. They had gone through all of the processes with the staff and gotten all of the comments back. They were on their third round and had successfully gone through that piece except for the variance request and a plat.

Member David Dupree asked for clarification about the percentages, what they really looked like and if there were translations into feet. Chairman Kristin Grove stated the South Waterfront was different because it was done by percentage. Mr. Sanders stated it was about trying to push the building to the street edge as much as possible and they were doing that in all cases except for where they had some breaks in some of the massing of those buildings so that would be created to be outdoor space. To have those curved buildings address that street would be quite awkward and not very attractive.

Member David Dupree asked for further clarification and Mr. Hall stated they were required to be 10 feet from the road, the front of the buildings were required to be no further away than 10 feet from the sidewalk. Mr. Hall demonstrated on a site plan indicating they were supposed to be 10 feet to the road but they were further back because the building was straight and the road started to curve away. They were asking to be allowed to not have to put some kind of curve in the building because the road was already there. They were asking for some leeway to be back a little further.

Chairman Kristin Grove confirmed with staff that the applicant had worked continuously back and forth with City staff. Peter Ahrens stated that was correct and that they were compliant with the Code, other than what was being requested.

Member Charlie Van Beke made a motion to approve. Member Charlie Van Beke stated there were topographical problems, the curvature of the street provided challenges and a hardship for the developers. It was seconded by member Daniel Odle.

Chairman Kristin Grove stated she couldn't think of another area on the South Waterfront that had the same situation with the road. When looking at what had been built on the water front, they were on more of a straight edge with the river. Chairman Kristin Grove stated the development fell within the lines with the other things that had already been built within the Code. The Board voted 5-0 to **APPROVE**.

NEW BUSINESS

File: 12-B-19-VA
Applicant: Southern Signs, Inc.
Address: 7325 Middlebrook Pike

Parcel ID: 106JD030
3rd Council District

Zoning: C-1 (Neighborhood Commercial) District

Variance Request:

1) Reduce the minimum required front setback of a monument sign in a C-1 zone from 10' to 0' (Article 8, Section 7.1.a)

2) Increase the maximum overall height of a monument sign in a C-1 district from 6' to 6'4" (Article 8, Section 11.6.e.2)

As per plan submitted to install a new monument sign in the C-1 (Neighborhood Commercial) District.

Peter Ahrens advised the existing foundation protruded currently into State right-of-way which would need to be removed no matter what the decision was of the Board.

Scott Elder advised the reason why it didn't enjoy the other, normal height was that Middlebrook Pike was a scenic highway and therefore, they were limited to 6 ft.

Applicant representative Keith Brooks was present and advised there was no other place on the front of the property that wouldn't impede visibility or traffic flow in the parking lot. There was a 23 foot/6 foot distance between the sidewalk and the edge of the concrete base. If they were to step back the sign wouldn't be visible at all.

Member David Dupree made a motion to approve variance #1. It was seconded by member Charlie Van Beke. Member Daniel Odle was opposed. The Board voted 4-1 to **APPROVE**.

Member Don Horton asked why the sign couldn't be shortened. Mr. Brooks advised the existing base had a pipe in the foundation that they wanted to reuse and they would need to do a transition plate from the sign to the existing pipe that was in the ground. Mr. Brooks confirmed that the sign was a standard sign supplied by BP and the skirt would be to hide the pipe. The base on the bottom of the sign would be aluminum which would hide the pipe that would come out of the concrete pad.

Chairman Kristin Grove confirmed that they would have to have the full 1'4" to hide the pipe and Mr. Brooks advised that was correct. Member Don Horton asked why they couldn't just cut the whole pipe off and bolt it to the slab. Mr. Brooks advised that Engineering wise that might not be approved, it would depend on the wind load of the sign and they would like to tie into the existing footer. The concrete pad that was there was actually a dress pad around a huge foundation.

Member Charlie Van Beke made a motion to approve variance #2. It was seconded by member Don Horton. Members Daniel Odle and David Dupree were opposed. The Board voted 3-2 to **APPROVE**.

File: 12-C-19-VA
Applicant: Herberto Hernandez
Address: 116 Green Rd.

Parcel ID: 13719304
1st Council District

Zoning: C-4 (Highway and Arterial Commercial) District

Variance Request:

1) Reduce the minimum parking space requirement for a restaurant from 18 to 14 (Article 5, Section 7.D.1.Table 1.31.)

As per plan submitted to renovate an existing Radio Shack into a restaurant in the C-4 (Highway and Arterial Commercial) District.

Applicant representative Slemons Mathes was present and advised the plan was a grand design because in doing research he discovered that there were no lease/parking agreements. Mr. Mathes felt that Walmart had designed the out-portion of the parking lot.

Member Don Horton noted that the applicant was required to have 18 spaces and they had 14. In order to comply they would have to build 4 more parking spaces next to a parking lot that has way too much pavement to begin with. Peter Ahrens confirmed that was correct or they could get a lease agreement with the adjacent property owners if there were excess spaces over there.

Mr. Mathes stated someone from Walmart should've been at the meeting to represent Walmart. Chairman Kristin Grove asked if Mr. Mathes had made efforts to contact Walmart. Mr. Mathes advised that he had made efforts to contact them by going to the store and contacting a couple of people.

Peter Ahrens advised this was originally a Radio Shack, a retail space, with a less intense use as far as parking was required. In the original design it provided adequate parking for that use. At that point in time there were no maximums, so if part of the design was to be all inclusive it could've been addressed at that point. City Engineering didn't ask the applicant to add spaces in an extra area, there was no more space to install another parking spot. The crux of it was that it was a different, more intense use.

Chairman Kristin Grove made a motion to approve based on the fact that it was surrounded by a sea of parking, the actual site that the building sat on was maximized, it was an odd shape and it was a minimal request of 4 spaces. It was seconded by member Don Horton. The Board voted 5-0 to **APPROVE**.

File: 12-D-19-VA
Applicant: C3 Studio, LLC
Address: 1119 Sevier Ave.

Parcel ID: 095OA041
1st Council District

Zoning: FD-SW-3 (Sevier Avenue) District

Variance Request:

- 1) To reduce the minimum width of a landscaping buffer from 10' to 0' for a parking lot that adjoins a public street in an FD-SW-3 district (Article IV, Section 4.1.4.D.b)
- 2) To reduce the minimum width of a parking aisle from 26.0 feet to 24 feet 8 inches (Article V, Section 7.E.d)

As per plan submitted to maximize parking for a pre-existing, non-conforming structure in the FD-SW-3 (Sevier Avenue) District.

Daniel Odle recused himself.

Joshua Frerichs advised the access to the parking lot was currently unrestricted which was a safety issue. In order to fix that and still have enough parking, the applicant closed some of the right-of-way to be more in line with their neighbors and they restricted access to one driveway which fixed a lot of the safety issues which were there.

Applicant representative Greg Huddy was present and advised it was an existing building and exiting parking lot and neither one of them were compliant to the form based code. Mr. Huddy stated they were asking for a variance on the landscape buffer for the existing parking lot and the drive lane between the parking. They were renovating the building and bringing it up to the form based code and they wanted to bring the parking lot up to the spirit of the form based code by still planting the required trees and shrubs. Mr. Huddy advised if they took 10 ft. away from the front of the property they would lose 5 parking spaces. They currently had 18 parking spaces which were being reduced to 14 with the BZA application. They did not feel that they could give up more parking but they came up with a compromise that allowed them to still buffer, plant and improve but to do that they needed the two variances.

Member David Dupree made a motion to approve. It was seconded by member Charlie Van Beke. The Board voted 5-0 to **APPROVE**.

File: 12-E-19-VA
Applicant: Chad Smock
Address: 1526 Coleman Rd.

Parcel ID: 107GC012
2nd Council District

Zoning: O-3 (Office Park) District

Variance Request:

- 1) Reduce the minimum driveway width from 20 feet to 18 feet (Article V, Section 7.H.3.c)

As per plan submitted to construct an 18 ft. roadway in the O-3 (Office Park) District.

Joshua Frerichs advised Engineering did not have an issue from a safety standpoint.

Applicant Chad Smock was present and advised the subject property only had 12.5 feet of frontage. There was an additional 12.5 feet of shared driveway. There was an existing retaining wall that was constructed on the neighboring property without regard to the easement so it restricted the applicant from getting the plan 20 ft. without surcharging that wall and from the proposed drive it was a steep slope.

Mr. Smock advised the property was originally residential, is now vacant and had been rezoned for office. The neighboring property owner was not aware of the easement until Mr. Smock bought the property to develop it for office use. Member Charlie Van Beke confirmed that the neighboring property owner was in violation with the easement and Mr. Smock advised he was ok with that and they had come to terms as long as Mr. Smock to get the driveway in.

Member Don Horton asked if the office type had been confirmed. Mr. Smock advised it would be an Engineering firm with 7 current employees.

Chairman Kristin Grove made a motion to approve based on the shape of the lot and the existing conditions. It was seconded by member Charlie Van Beke. The Board voted 5-0 to **APPROVE**.

File: 12-F-19-VA
Applicant: T and T Signs, Inc.
Address: 7535 Mountain Grove Dr.

Parcel ID: 13723523
1st Council District

Zoning: C-3 (General Commercial) District

Variance Request:

1) Increase the maximum overall height of a secondary detached monument sign in a C-3 zone from 8' to 22' (Article VIII, Section 11.6.b.3)

As per plan submitted to install a road sign in the C-3 (General Commercial) District.

Peter Ahrens advised it was a secondary, detached monument sign as opposed to primary signage.

Applicant representative Bill Dockter was present and advised the property faces Mountain Grove, Chapman Highway is 25-30 feet above Mountain Grove and the Governor John Sevier Highway overpass blocked the view of signage. Mr. Dockter advised they weren't trying to increase the size of the sign but they were trying to increase the height so they could get visibility from Chapman Highway.

President of Scenic Knoxville Joyce Feld was present to speak in opposition. Ms. Feld advised that in addition to the 8ft. secondary sign on Chapman, the applicant also had a visible 10ft. primary sign in iconic, highly recognizable building design; a visible, illuminated wall sign of the logo in addition to several accessory, directional signs. Ms. Feld stated there was no legitimate hardship that fell under the ordinance and the applicant was not denied reasonable use of their land.

Mr. Dockter advised it was an unusual piece of property in regard to the slope of the land. The applicant was trying to get that 8ft. above road grade and in order to do that they needed to be 22 ft.

Chairman Kristin Grove asked if there was any type of joint development sign at the entrance. Mr. Dockter advised there was a multi-tenant sign on Chapman Highway but their property would not be a part of that sign.

Member Charlie Van Beke asked if this was an existing Wendy's. Mr. Docketer advised it was new construction.

Member David Dupree asked if the neighboring properties had a similar sign. Mr. Docketer advised the neighboring McDonalds had a much bigger sign which was installed prior to the sign ordinance.

Member Don Horton confirmed there was no access to the property from Chapman Highway. Chairman Kristin Grove advised that the point of the sign ordinance was to provide the appropriate visibility which would be off of Mountain Grove Dr.

Mr. Dockter stated that when you go to a fast food restaurant it's an impulse decision that you make as you drive by when you see the signage.

Member Daniel Odle asked how tall the primary sign was allowed to be on the road frontage which was Mountain Grove Dr. Peter Ahrens advised it was 10ft. for the primary.

Mr. Dockter advised they wanted to use the same sign but put it on a different mount.

Chairman Kristin Grove made a vote to allow Ms. Feld to speak in opposition again. The Board voted 5-0 to allow the vote.

Ms. Feld stated they received a lot of feedback from the fast food industry when they were creating the sign ordinance and the argument frequently used was that the fast food industry needed large signs because it was an impulse purchase. Ms. Feld stated that all of that had been taken into consideration when creating the sign ordinance.

Applicant representative Mike Wilson was present and advised that they were asking for an opportunity to be able to compete effectively, the signage would help them to do that and it wasn't a really big sign, just a bit higher.

Member Charlie Van Beke asked if there was signage on the back side of the building. Mr. Wilson advised the building design had a "wing" which was about 9ft. taller than the roof itself but they were still down below road grade, there would not be a sign on the "wing".

Chairman Kristin grove made a motion to deny based on the lack of true hardship. It was seconded by member David Dupree. Member Charlie Van Beke opposed the denial. The Board voted 4-1 to **DENY**.

SPECIAL BUSINESS

Chairman Kristin Grove made a motion to elect member Daniel Odle as the new Board Chair. It was seconded by member Don Horton. The Board voted Daniel Odle in as the 2020 Board Chair of BZA.

ADJOURNMENT

The meeting adjourned at 5:19pm.

OTHER BUSINESS

The next BZA meeting is January 16, 2020.